

Approved as Submitted: June 16, 2004

**CITY OF MORGAN HILL
JOINT SPECIAL AND REGULAR CITY COUNCIL
AND SPECIAL REDEVELOPMENT AGENCY MEETING
MINUTES – JUNE 2, 2004**

CALL TO ORDER

Mayor/Chairman Kennedy called the special meeting to order at 6:00 p.m.

ROLL CALL ATTENDANCE

Present: Council/Agency Members Carr, Sellers, Tate and Mayor/Chairman Kennedy
Late: Council/Agency Member Chang (arrived at 6:25 p.m.)

DECLARATION OF POSTING OF AGENDA

City Clerk/Agency Secretary Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

City Council and Redevelopment Agency Action

CLOSED SESSIONS:

City Attorney/Agency Counsel Leichter announced the below listed closed session items.

1.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Authority:	Government Code Sections 54956.9(b) & (c)
Number of Potential Cases:	3

OPPORTUNITY FOR PUBLIC COMMENT

Mayor/Chairman Kennedy opened the Closed Session items to public comment. No comments were offered.

ADJOURN TO CLOSED SESSION

Mayor/Chairman Kennedy adjourned the meeting to Closed Session at 6:03 p.m.

RECONVENE

CLOSED SESSION ANNOUNCEMENT

City Attorney/Agency Counsel Leichter announced that no reportable action was taken in closed session.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

CITY COUNCIL REPORT

Council Member Chang reported that the Central Coast Regional Water Quality Control Board is filing an appeal to South County Regional Wastewater Authority's (SCRWA) permit. She said that this will result in a long period of litigation. She indicated that SCRWA will be pursuing a permit in September and if successful in obtaining the permit, SCRWA may not need to go through the appeal process. She indicated that the Santa Clara Valley Water District is increasing its pump tax to \$200 which will amount to a 5% rate increase for the next few years. She recommended that the Council look at the City's water rates in September 2004. She noted that the City has been increasing its water rates by 2% a year for the next four years. She indicated that this has not included the pump tax. In response to Mayor Kennedy's question, she stated that the Sixth District Court of Appeal will be reviewing the appeal of the SCRWA permit to discharge. She stated that the Wastewater Authority won the last appeal hearing.

Council Member Tate reported that the Library Subcommittee has met a couple of times and worked with the Library Commission on outlining a criteria for basing a decision on the library location and funding. He said that the Library Commission will be meeting next Monday night at 7:15 p.m., a week in advance of their normally scheduled meeting. He indicated that the Library Commission will be formulating their recommendations for Council consideration on June 23, 2004 when the Council is scheduled to make its decision on how the City should proceed with the library.

CITY MANAGER REPORT

City Manager Tewes reported that the aquatics center will be opening on Saturday, June 12 with a gala ceremony beginning at 9:00 a.m. He said that season passes and swim lessons are still available and can be obtained from the Community & Cultural Center. He announced that the police station is nearing completion with a grand opening ceremony scheduled for Saturday, June 26 at 10:00 a.m. He wished the Britton Middle School Band the very best on their last concert of the year being held this evening.

CITY ATTORNEY REPORT

City Attorney Leichter indicated that she did not have a report to present this evening.

OTHER REPORTS

Mayor Kennedy presented a Certificate of Appreciation to Eddie Bowers for organizing the Memorial Day ceremony each year.

PUBLIC COMMENT

Mayor/Chairman Kennedy opened the floor to public comments for items not appearing on this evening's agenda. No comments were offered.

City Council Action

CONSENT CALENDAR:

City Manager Tewes requested that item 5 be removed from the agenda, indicating that the item will return to the Council at a later date.

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) **Approved** Consent Calendar Items 1-4 and 6-12, as follows:*

1. **AMEND AGREEMENT WITH THE STROMBOTNE LAW FIRM**

Action: **Authorized** the City Manager to Execute an Amendment to the Agreement with the Strombotne Law Firm.

2. **APPROVAL OF A MEMORANDUM OF UNDERSTANDING (MOU) TO CONDUCT A REGIONAL ANNUAL INTEGRATED PEST MANAGEMENT (IPM) PROGRAM**

Action: **Approved** MOU Joining the Counties of Alameda, San Francisco, and Santa Clara, Santa Clara Valley Water District, Fairfield Suisun Sewer District, Vallejo Sanitation and Flood District, and Orkin Pest Management Company to Conduct an Annual IPM Conference.

3. **FINAL MAP ACCEPTANCE FOR LANDS OF MARQUEZ (TRACT 9552)**

Action: 1) **Approved** the Final Map, Subdivision Agreement and Improvement Plans; 2) **Authorized** the City Manager to Sign the Subdivision Improvement Agreement on Behalf of the City; and 3) **Authorized** the Recordation of the Map and the Subdivision Improvement Agreement Following Recordation of the Development Improvement Agreement.

4. **ACCEPTANCE OF MAIN AVENUE/UNION PACIFIC RAILROAD (UPRR) CROSSING PROJECT**

Action: 1) **Approved** Change Order for Extra Work in the Amount of \$40,161.11; 2) **Appropriated** \$21,219 from Unappropriated Water Capital Impact Fund (651); 3) **Accepted** as Complete the Main Avenue/UPRR Crossing Improvement Project (#524000) in the Final Amount of \$329,805.21; and 4) **Directed** the City Clerk to File the Notice of Completion with the County Recorder's Office.

5. **APPROVAL OF COPY MACHINE LEASE FOR POLICE DEPARTMENT AND AQUATICS CENTER**

Action: 1) **Removed** from the Agenda (to be rescheduled/agendized for a future meeting date).

6. **JOIN THE APPEAL CASE OF SILICON VALLEY TAXPAYERS ASSOCIATION, ET AL, V. Santa Clara COUNTY OPEN SPACE AUTHORITY**

Action: **Authorized** the City Attorney to join the Cities of Santa Clara, San Jose, Milpitas and Campbell, and the County of Santa Clara, in support of the Santa Clara County Open Space Authority in the Sixth District Court of Appeal case of Silicon Valley Taxpayers Association, et al., v. Santa Clara County Open Space Authority.

7. **MOBILE HOME RENT COMMISSION**

Action: 1) **Accepted** Mark Moore's Resignation Effective May 31, 2004; and 2) **Approved** Mayor's Appointment of Incumbent Commission Members Charles Dillmann, Robert Graham, and John Liegl to Serve Two-Year Terms Expiring June 1, 2006.

8. **ADOPT ORDINANCE NO. 1674, NEW SERIES**

Action: **Waived** the Reading, and **Adopted** Ordinance No. 1674, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A DEVELOPMENT AGREEMENT FOR APPLICATION MMP-03-01: NATIVE DANCER – QUAIL MEADOWS (APN 779-02-014) (DA-03-09: NATIVE DANCER – QUAIL MEADOWS).**

9. **MINUTES OF SPECIAL CITY COUNCIL MEETING OF APRIL 28, 2004.**

Action: **Approved** the Minutes as Submitted.

10. **MINUTES OF SPECIAL CITY COUNCIL MEETING OF MAY 19, 2004.**

Action: **Approved** the Minutes as Submitted.

11. **MINUTES OF SPECIAL CITY COUNCIL MEETING OF MAY 21, 2004.**

Action: **Approved** the Minutes as Submitted.

12. **MINUTES OF SPECIAL CITY COUNCIL MEETING OF MAY 26, 2004.**

Action: **Approved** the Minutes as Submitted.

City Council Action

CONSENT CALENDAR: (Continued)

Council Member Chang indicated that she has a conflict with agenda item 13 as the property is located near her place of business. She recused herself from voting on this item and stepped away from the Dias.

Action: On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council on a 4-0 vote with Council Member Chang absent, **Approved** Consent Calendar Item 13, as follows:

13. **ADOPT ORDINANCE NO. 1675, NEW SERIES**

Action: ***Waived** the Reading, and **Adopted** Ordinance No. 1675, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING DEVELOPMENT AGREEMENT, DA 04-02 FOR APPLICATION MP 04-01: CENTRAL-SOUTH COUNTY HOUSING. (APNS 726-24-07, 022, 023 & 024).***

City Council and Redevelopment Agency Action

CONSENT CALENDAR:

Action: *On a motion by Council/Agency Member Tate and seconded by Mayor Pro Tempore/Vice-chair Sellers, the City Council/Agency Board unanimously (5-0) **Approved** Consent Calendar Items 14-16, as follows:*

14. INVESTMENT POLICY UPDATE

Action:*1) **Reviewed** and **Adopted** the Updated Investment Policy for the City; and 2) **Reviewed** and **Adopted** the Updated Investment Policy for the Redevelopment Agency.*

15. MINUTES OF SPECIAL AND REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING OF MAY 19, 2004.

Action: ***Approved** the Minutes as Submitted*

16. MINUTES OF REGULAR REDEVELOPMENT AGENCY AND SPECIAL CITY COUNCIL MEETING OF MAY 26, 2004.

Action: ***Approved** the Minutes as Submitted*

Action: *The City Council considered the separate Special City Council/Redevelopment Agency meeting agenda and considered Agenda Item 27 at this time based on Council policy to consider Public hearings at 7:30 p.m. or thereafter.*

City Council Action

OTHER BUSINESS

27. GENERATING LEGISLATIVE SUPPORT FOR COMPROMISE BUDGET LANGUAGE

City Manager Tewes presented the staff, indicating that the League of California Cities, California Supervisors Association and Special Districts have qualified an initiative for the November 2004 ballot. He stated that the initiative, which would protect local revenues, led to a compromise proposal by the Governor. He indicated that the Governor would support a ballot measure to protect local revenues provided that local agencies supported two more years of takeaways in order to help balance the State

budget. He stated that the Council's Legislative subcommittee has reviewed this proposal and is asking the Council to discuss the extent to which the City should actively support the compromise and urge the City's legislators to support the compromise. He indicated that budget hearings have begun in Sacramento and that the Constitution requires the State budget to be adopted by June 15. He said that it is being heard that it will be difficult to meet this deadline but that the Governor is anxious to try and adopt the budget by the deadline. He stated that a recent California poll conducted by the Public Policy Institute suggests that 75% of Californians believe that the State budget gap is a serious issues; 2/3 of Californians do not believe that the legislature is up to the task, and that 60% of Californians support the initiative qualified by the League of California Cities.

Mayor Pro Tempore Sellers stated that the Council's Legislative subcommittee has undertaken a more formal process than it would normally undertake but that this came out of a discussion held about the appropriate way to let the City's views be known. He noted that the City Council has already expressed support through formal resolution but that the Legislative subcommittee felt that the most effective way to address the issue is to recommend that Council members, individually, approach legislative leaders. He said that the Legislative subcommittee is asking its fellow Council members to contact local legislative officials and others who might be helpful. The Legislative subcommittee believes that it is important to advise the community as to the steps the Council is taking and that it is important to encourage legislators to support the initiative. He indicated that the Secretary of State has certified that the initiative qualified and will be placed on the November ballot. The initiative being promoted will give greater weight and will assist in coming up with a better long term solution.

Mayor Kennedy stated that the Council authorized its voting delegate to support the League of California's action, indicating that this has been the only formal action taken by the Council. He inquired whether the Council wants to take any action beyond this.

Council Member Carr indicated that the League is asking cities to adopt a formal resolution and send a formal letter to the legislature. The Legislative subcommittee is recommending that the Council take a less formal approach. He recommended that Council members take it upon themselves to make the individual contacts, as deemed appropriate.

Council Member Tate indicated that the Council received the Legislative Analyst's review of the May revise that opened serious concerns. He did not know how strongly you could endorse something that could have serious flaws.

Council Member Carr said that the Legislative subcommittee discussed the flaws and thus part of the reason why it decided not to bring a formal action/position as it may not have be a 5-0 Council vote.

Mayor Pro Tempore Sellers said that the Legislative subcommittee discussed the fact that the role of Council members is distinct from its roles as citizens of the State of California. He felt that the Council needs to give consideration to what is best for the City of Morgan Hill. He said that the concerns addressed by the Legislative Analyst primarily talked about the fact that when the bill comes due in two years, there will be a lot the State will need to grapple with. He felt that it made sense for Morgan Hill to have the revenues back in two years.

Mayor Kennedy said that should the Council take a vote on the resolution supporting the compromise budget measure with the Governor that may result in a 3-2 vote and would not be a ringing endorsement. He felt that a 3-2 vote would do more harm than good, thus the recommendation from the Legislative subcommittee that Council members handle this matter individually.

Mayor Pro Tempore Sellers stated that it is felt that it would be more effective to ask Council members to individually express its views on this as it would give the legislature a view of what is being discussed in Morgan Hill. He felt that individual contacts would carry more weight than having another piece of paper on their desks.

Action: *Information Item, No Action Taken.*

PUBLIC HEARINGS:

17. PROTEST, PRO-04-02: ANNEXATION, ANX-02-02: COCHRANE-BORELLO II – Resolution No. 5799

Planning Manager Rowe presented the staff report, indicating that this is a hearing to receive protest to a proposed annexation. He noted that the property in question is situated along Cochrane Road. He informed the Council that the City received an annexation application, rezoning approximately 15 acres and 1.24 acre parcels. He stated that in order for a City conducted annexation to proceed without notice of a hearing requires 100% of the land owners. He noted that the City does not have 100% consent in this case. He said that the procedures in the Government Code and LAFCo guidelines stipulate that the Council must first schedule a hearing. He noted that the Council took this action at its May 5, 2004 meeting, setting tonight as the opportunity for protesting the proposed annexation. He addressed the procedures to handle the protest. He said that based on the relative land area, the Borello property, being the larger of the two parcels, represents more than 50% of the value. The Council could determine this evening that the majority proponent for the annexation represents more than 50% and allow the annexation procedure to include both properties. The Council could also choose not to allow for the annexation to proceed based on the fact that there is not the consent. He said that the reason it is necessary to include the 1.24 acre parcel is due to the fact that should the larger parcel be annexed, the smaller parcel would be surrounded by the City limits on four sides. The City cannot conduct an annexation proceeding that would result in the creation of an unincorporated island. He informed the Council that a reason for the objection to the annexation is the fact that the county zoned 1.24 acre parcel owner has enjoyed the rural life style and being able to maintain animals on the property. The property owner has a desire to continue to have horses and other animals on the property and continue the same lifestyle. To address the property owner's ability to continue to maintain animals on the property, a condition was placed on the zoning that a 100-foot setback buffer area be provided around the adjacent parcel to ensure that the all of the dwellings are sited at least 100-feet beyond the property line. This requirement would ensure an adequate separation from the proposed new residences from the existing properties. He informed the Council that the project proponent has agreed to this condition.

Planning Manager Rowe informed the Council that the larger parcel participated through the Measure P competition process and was successful in receiving 15 building allotments. If the annexation is not allowed to proceed or cannot be completed before the fiscal year that the allocations become available, the property owner would have to forfeit those allocations and be reassigned to another project located within the City limits. He informed the Council that the larger parcels are on average under an acre and would not be able to keep animals. However, there are a few parcels that are sized large enough (minimum one acre) to allow animals. He indicated that County zoning allows keeping four horses while the City allows 2 large animals and their immature offspring. If annexed, the property could be brought into the City limits and the property owner would be able to maintain four horses on the property that would be considered a nonconforming use under the City's code. As long as there is no succession of the non conforming use, it would be allowed to continue (cannot increase the degree of non conformity.)

Mayor Kennedy inquired whether there were any written protests to the annexation. None were identified.

Mayor Kennedy opened the public hearing.

Vince Burgos, Development Processing Consultant, informed the Council that he represents the applicant. He indicated that he has worked closely with the adjacent property owner in an attempt to address all issues. He felt that everything was done to accommodate future development with the existing situation. He stated that he did not design the project to accommodate horses and that it was designed to allow flexibility. If there was a preference at the tentative map stage to reduce the lot size where they would not accommodate animals, he has room on the plans to do so. The project incorporated 100-foot setback and large lots to provide the feathering of lot sizes.

City Manager Tewes said that typically, the City does not have a protest hearing because all property owners consent to the annexation. However, this did not occur in this interest. Therefore, it was necessary to hold the protest hearing. At the protest hearing, the Council has invited and closed the opportunity for written protests to be made. He noted that no protests were made. Therefore, it would be appropriate for the City Attorney to advise the Council of its options at this point.

City Attorney Leichter said that seeing that no oral or written protest is before the Council, the Council can adopt a resolution, terminating the protest hearing.

No further comments being offered verbally or written, the public hearing was closed.

Mayor Pro Tempore Sellers said that he understood the reason for feathering the lot sizes. He was encouraged by the fact that the applicant was willing to come up with a compromise in providing the extra land around the adjacent property and allowing the property owner to have extra animals. He indicated that four animals on the 1.24 acre parcel is fairly compacted. While he felt that it was appropriate to accommodate this property owner, he was anxious about allowing or encouraging large animals on the adjacent property as the problem would be extended. He recommended that a statement be made that the Council does not necessarily want to encourage large animals on the adjacent properties. He felt that a better solution would be to try and have vacant space or a buffer on the

property. He did not believe that the City should be encouraging large animals on adjacent properties as the problem would be extended or created in the future.

Council Member Chang inquired whether the property owner who protested the annexation was informed that there was a public hearing schedule this evening.

Planning Manager Rowe responded that the adjacent property owner was advised of the public hearing and that they were provided with a copy of the staff report and the agenda. He indicated that the reason for the protest hearing was based on the fact that the City did not have 100% consent on the annexation. He said that previous correspondence of October 2003 from the property owner indicating that they were not in favor of the annexation. Following the Council's action to set tonight's hearing to receive written protest, no written protest was received. He indicated that the property owner was advised as to the procedures of a protest hearing.

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) **Adopted** Resolution No. 5799.*

18. DEVELOPMENT AGREEMENT AMENDMENT DAA 02-09: DEWITT-MARQUEZ – Ordinance No. 1676, New Series

Planning Manager Rowe presented the staff report.

Mayor Kennedy opened the public hearing.

Patricia Possley informed the Council that the lots have been cleaned/graded, noting that vegetation has been removed, resulting in only three trees remaining on the lots. She expressed concern with the timeframe for the installation of landscaping or means to prevent erosion when the rains come.

Cynthia Bunch also expressed concern with erosion as there is no longer vegetation on the lots to stop the erosion. She stated that with the amount of dust that exists and the project being moved out a year or two will be hard on residents who do not have air conditioning and/or double paneled windows. She was hoping that the developer would be able to build seven homes within a reasonable time period. She requested that the Council deny the extension based on her concerns as stated, including noise.

Council Member Tate clarified that the extension request is only for six months in addition to the six months previously granted by the Council.

John Marquez, applicant, indicated that he proceeded with demolition work. He stated that he has funding in place and is ready to proceed with construction. He informed the Council that the first phase (pushing dirt) will take place for all units at the end of June, pulling permits and building the first five units in August 2004, assuming that the improvement plans are completed and accepted by public works. He clarified that he is installing all improvements for both sites at one time. He said that an erosion control plan will be accepted at the same time the improvement plans are accepted.

No further comments being offered, the public hearing was closed.

Planning Manager Rowe indicated that the homeowners reacted to a rough grading/demolition to remove the buildings and old vegetation that are not slated for preservation. The site is being prepared for the grading permit, the construction of the street, and grading of the pads. He identified the development schedule. He said that erosion control measures need to be in place by October 1 (e.g., hydro seeding, vegetated ground cover) before the rain comes in. There will be other measures required to ensure that erosion and runoff does not occur. He stated that erosion control plans are part of the offsite improvement plan package that are approved by public works. He said that erosion control is not addressed in the development agreement but that staff could include a provision for one should the Council believe it would improve the situation. He said that erosion control is required by City code.

City Manager Tewes indicated that improvement plans must be prepared and submitted by a registered engineer. The plans are reviewed and approved with public works inspectors inspecting these in the field.

Council Member Carr recommended that the development agreement include a condition that by August, the erosion control plan is to be in place as part of the improvements to alleviate the neighbors' concerns.

City Manager Tewes said that City code requires that erosion control measures must be in place by October. He inquired whether Council Member Carr is suggesting that by August, the developer must submit the plans or whether they need to be approved by that date.

Council Member Carr stated that he heard the applicant state that his initial plans will be submitted right of way.

City Manager Tewes clarified that the applicant will submit plans and that staff will evaluate them and send them back to him for any needed revisions.

Planning Manager Rowe said that as part of the approval of the mitigated negative declaration for the project, there are some measures that need to be undertaken to protect air quality. He indicated that dust particles will require periodic watering down. He said that given the input received this evening, staff could ask code enforcement staff to visit the site tomorrow to determine whether the site needs to be watered down because rough grading created the problem.

Mayor Kennedy informed the adjacent neighbors in attendance this evening that the Council would ensure that dust control and erosion control measures will be put into place as part of the approval of this project.

Council Member Carr said that he would like to add a condition that would step up the erosion plan by August 2004.

City Attorney Leichter said that the Council could include a condition in the granting of the extension to the development agreement to reflect that August 2004 is the due date for the erosion control plan.

Action: *On a motion by Council Member Carr and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) **Waived** the Reading in Full of the Development Agreement Amendment Ordinance No. 1676, New Series.*

Action: *On a motion by Council Member Carr and seconded by Mayor Pro Tempore Sellers, the City Council **Introduced** Ordinance No. 1676, New Series by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1618, NEW SERIES, TO AMEND DEVELOPMENT AGREEMENT DAA-02-09 FOR APPLICATION MMP-02-02: DEWITT – MARQUEZ TO ALLOW FOR A SIX-MONTH EXTENSION TO THE APPROVED DEVELOPMENT SCHEDULE (APN 773-08-014), amending the development agreement to require the submittal of a dust and erosion control plan by August 2004 by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.***

Mayor Kennedy requested that the City code enforcement staff inspect the site for dust and make sure that it properly wetted down.

19. 2004 HAZARDOUS BRUSH PROGRAM COMMENCEMENT REPORT AND PUBLIC HEARING

Assistant to the City Manager Dile presented the staff report.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Tate and seconded by Council Member Chang, the City Council unanimously (5-0) **Accepted** the 2004 Hazardous Brush Program Commencement Report.*

20. HEARING FOR EXEMPTION TO UNDERGROUNDING UTILITIES – 17590 DEPOT STREET

Director of Public Works Ashcraft presented the staff report, informing the Council that the property owner of 17590 Depot Street is requesting that the Council consider his request to pay in lieu fees versus undergrounding utilities fronting his project. He indicated that the request is in accordance with City code and that staff recommends approval of the request as staff believes it would be more cost effective to install the underground utilities with a larger installation. Should the Council grant the request, the property owner would be paying a total of \$28,840 into the City's underground funds.

Mayor Kennedy opened the public hearing.

Charles Weston, property owner, clarified that the calculation did not include the property located on Main Street. He felt that the amount should be \$103 per linear feet and that he has 270 linear feet along Depot Avenue. He said that the calculation may be a result of the radius at the corner of Main and Depot Streets. If you take 270 and multiply that by \$103, it would not result in the figure identify by Mr. Ashcraft (\$27,810 versus \$28,840). He indicated that he and Mr. Ashcraft are discussing extenuating circumstances regarding the electrical telephone poles that are not located in the public right of way. However, this is not an agenda item for Council discussion.

City Manager Tewes said that if there is a dispute about the amount of lineal feet, the Council can approve the request subject to verification by the public works director or the Council can postpone the hearing for two weeks in order to allow staff and Mr. Weston to resolve the difference.

Mr. Weston said that Mr. Ashcraft knows the regulation better than he does and that the difference may have to do with the radius that is being taken into account in the City's figure.

Mr. Ashcraft said that there is a method to calculate lineal feet and that it is done consistently. He stated that he was willing to discuss this issue with Mr. Weston. If he is still not convinced that the City's calculation was right, staff could bring this issue back to the Council.

Mr. Weston said that his concern with the schedule is that public works is not allowing the dayworkers the ability to occupy the building until the offsite work is completed. He said that the schedule calls for the dayworker center to be complete minus the offsite improvements for approximately six weeks. He felt that it was imperative that he gets started with the offsite improvements as soon as possible unless staff can make an exception to the rule to allow a temporary occupancy while he proceeds with the construction of the offsite improvements.

City Attorney Leichter indicated that she understands that the difference is \$1,030. She recommended that the Council approve the request subject to verification of the calculations by the public works director, considering Mr. Weston's comments.

Mr. Weston said that he was not too concerned about the money as he was sure that it is a mistake either on his part or public works staff. His only concern was about the schedule. If the Council extends his request for two weeks to allow the calculation to be resolved, it would add two weeks in the delay of opening the dayworker center as the offsite work has to be completed. He requested that the Council allow the dayworker facility to open without the offsite improvements being completed.

City Manager Tewes informed the Council that he and Mr. Weston have had recent conversation about this issue. He noted that this issue was well debated by the City Council. The Council and the dayworker advocates were well aware of the offsite improvement requirements and the reason that the Council lent money to this development entity in order to construct the offsite improvements with deferred payments so that they were not out of pocket during this interim period. He stated that everyone is interested in moving forward with the offsite improvements. However, it is not a question of the public works director deferring the off site improvements to allow the dayworker center to open. He noted that completion of the offsite improvements is required by code before allowing occupancy.

Mr. Weston said that the design for the drainage inlet required by the public works department resulted in an additional time delay to redesign and go out to bid. Had the drainage issue not occurred, he did not believe that this issue would have surfaced. He indicated that it would take approximately six weeks before the dayworker center would open while he is constructing the offsite improvements.

City Attorney Leichter clarified that the only matter before the Council this evening is the exemption to undergrounding of utilities. Should Mr. Weston wish to appeal the Council's prior decision on the offsite improvements, this would be a separate subject matter. Therefore, she did not believe that this discussion was appropriate under this agenda item.

No further comments being offered, the public hearing was closed.

Mayor Pro Tempore Sellers concurred that the issue before the Council is narrowly defined and that it sounds as though there is a few dollar difference in the calculation. It was his belief that public works understands the importance of expediting this item and that he has no doubt that the City and the property owner would come to a quick decision on the exact square footage and that actions can be expedited from there. He recommended that the Council proceed with the request.

Council Member Carr agreed that the action before the Council is narrowly defined and that this is not a unique request before the Council. He felt that the public works director can come to terms on the amount. He continues to express concern that had a full master plan been brought before the Council initially, the issue of timing would not be an issue for the Council today. He said that the Council has gone through a round of meetings to talk about the offsites. He did not know why the Council did not include the undergrounding of utilities at the time the loan was granted as well as the special loan for the offsite improvements and resolve the issue at that time. He agreed that public works staff understands the urgency of getting this done quickly so that occupancy can take place on the dayworker center.

Action: *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Carr, the City Council unanimously (5-0) **Granted** the Exemption to the Requirement to Underground Utilities with Payment in Lieu Fees for the Proposed Development at 17590 Depot Street.*

21. APPLICATION ZA-04-08: TEXT AMENDMENT – RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS) STANDARDS AND CRITERIA –Ordinance No. 1677, New Series

Planning Manager Rowe presented the staff report, identifying the recommended amendments to the City's RDCS standards and criteria. He informed the City Council that the RDCS Subcommittee consisted of Planning Commissioners Joe Mueller, Bob Benich and Ralph Lyle; Dick Oliver, developer; Bill McClintock, MH Engineering; Jan Lindenthal, South County Housing; and Bonnie Tognizzini, Morgan Hill Unified School District. He indicated that this committee met twice a week for approximately six weeks to formulate the revisions to the evaluation criteria before the Council. He

stated that the changes that are amended under Measure C are required to be implemented within 120-days of the effective date of the Measure, noting that the City is under this deadline at this point in time.

Mayor Kennedy opened the public hearing.

Ralph Lyle stated his support of the text amendments to the evaluation criteria.

Vince Burgos addressed the issue of timing. He said that following the approval of the recommended text amendments, the submittal deadline moves up from November 1 to October 1 and then to September 1 the following year. He said that this timeline does not give developers much time to design a project in three months. He stated that he wants to make sure that he has the time necessary to design the best project possible to submit for the RDCS competition. He requested that the deadline be moved to November 1 or that the Council authorize a start up date sooner than the end of June or early July.

Chris Borello addressed the criteria relating to the developer's point. He said that a project is awarded a point if the project teams up with a developer at the time of submittal of an application (page 235 of the agenda packet, item 5). He noted that it is proposed that a project be awarded a point for teaming up with a developer. If you change a developer halfway through the process or at the end of the process, the project would lose a point. He felt that this criteria would place landowners at a disadvantage as it increases the power a developer has over landowners because the one point would determine whether or not a project is allocated. He did not believe that landowners were aware of the proposed amendment and that if they knew that this was the case, there would be more landowners in opposition. Otherwise, he supports all other recommended modifications.

No further comments being offered, the public hearing was closed.

Mayor Pro Tempore Sellers addressed the building coverage percentage and the points awarded based on the percentage of the building coverage on the property. He expressed concern that R-3/multi-family densities would not be able to achieve as many points based on a higher building coverage. He inquired whether there was a way to allow R-3 projects to have a higher percentage building coverage.

Planning Manager Rowe responded that the Council could create a point(s) opportunity for applying a separate building coverage standard for multi-family/R-3 projects. He said that there are more opportunities to achieve 20 points under this category where a project is not depended upon achieving as many points for building coverage.

Mayor Pro Tempore Sellers referred to the household water conservation scoring criteria. He said that Council Member Carr previously recommended that the City award points for recycling grey water. He felt that this could be another item that could be given consideration. He recommended that the use of grey water be called out as a specific example. He referred to the architectural variation with the use of porches, balconies, or multi unit courtyards for any area viewed from the public right of way. He said that some of the more exciting higher density housing and downtown oriented projects he has come across in recent months have had internal facing courtyard areas that make the courtyard interior the focus of the community. He recommended that the City figure out a way to address this issue and not

penalize a project or limit creativity for these types of projects. He stated that he understood the goal of wanting to have a landowner team up with a qualified residential home builder at time of filing an application in order to minimize delays. He stated that he did not believe that it was appropriate to shift emphases heavily toward having a developer on board. He said that he appreciates that the City would like to streamline projects but that he did not want to do so at the expense of creativity or lack of flexibility. He addressed the Orderly and Contiguous category. He recommended that instead of having ½ point penalty increments all the way out from the central core beyond the 3,600 feet, you award one point increments. He supported the ½ points to a certain degree. However, he noted that when a project is far from the core, the project is still receiving the residual value, more than what the City may wish to assign.

Planning Manager Rowe stated that multi-family projects have the nature of having a higher percentage building coverage. He recommended that the Council consider looking at creating a separate point opportunity for R-3 projects. He said that there was a concern that multi family projects may not be able to achieve a qualifying score. Therefore, the RDCS subcommittee reviewed other scoring opportunities such as housing types, quality of construction, lot layout and landscaping. He felt that the double TDC commitment would help make up for the loss of points that R-3 have by virtue of their larger coverage under this criteria and that there are also additional point opportunities elsewhere in the policies to allow for multi family projects to do much better than they have in prior year competitions. Should the Council make changes under this criteria, the RDCS subcommittee would want to come back with revisions to the evaluation criteria specific to R-3 projects as it may have an unintended affect, resulting in having much larger coverage for single family projects.

Mayor Kennedy inquired how the Council addresses the desire to have mixed use development in the downtown (e.g., retail on the first floor and residential on the second and/or third floor).

Planning Manager Rowe stated that there is a recommendation that 10 units be set aside each year for vertical mixed use development. He clarified that a vertical mixed use developer would not need to compete for these allocations as it is proposed that units are made available on a first come first served basis. He indicated that these allocations can roll over into the next year if not used in the first year. Additionally, there is a set aside in the downtown where vertical mixed uses are typically located. He said that the same evaluation criteria would be used for downtown allocations. He indicated that he did not see a problem incorporating the design of grey water use under the Quality of Construction or Landscaping categories as a conservation measure. Regarding the multi unit courtyards, he felt that the wording could be adjusted. He said that the City should encourage porches, balconies and other elements that would be viewed from the public right of way. If these elements were interior to the project, it would result in a blank facade along the street. He said that the language could be modified to acknowledge that at least 25% of the multi unit courtyards would be able to achieve the same points. With respect to the qualified home builders, he said that staff could return with quantitative information. He said that the reason for the amendment is due to the fact that a landowner would go through the RDCS process on their own, market the project to a builder who in turn wants to make changes to the project. The thought was that if a landowner could align themselves with a builder at the onset, a project would be designed that would not require substantial changes to be made after the fact. He said that approximately half of the project applications are processed by landowners who market their projects to

a builder. There is a percentage of these where the builder will sell the project to another builder. The new criterion was intended to help streamline the development process and minimize the work load by having to process a new plan when there is a change in developers.

Council Member Carr felt that the problem may be eliminated if the Council was stricter on its approval of extensions with the allotments going back into the pool.

Council Member Tate expressed concern that the City would be making it hard for developers when the problem to be solved is not whether project changes developers but the delays and rework that takes place. He felt that this concern should be more directly addressed in the criteria rather than penalizing the developer.

Planning Manager Rowe said that should the Council concur with the recommended changes to the concentric circle as proposed by Mayor Pro Tempore Sellers, it would result in zeroing out approximately 7,200 feet out from the core versus 9,000 feet. He indicated that this would be a compromise from the recommended gradual drop off compared to the more abrupt one that was done previously. He noted that it would include a greater area of available sites that would have an opportunity for points and would strengthen the idea of developing more concentrically in relationship to the core. He said that the criteria could so be modified. He indicated that this was one approach, noting that the RDCS subcommittee looked at a number of different alternatives. He said that the RDCS subcommittee wanted to see how their recommendation would work for the first few years. If too permissive, the RDCS subcommittee would want to return with a recommendation to tighten up the criteria. He stated that he agreed with Mayor Pro Tempore Sellers' observation and felt that his suggestion would encompass a greater area versus utilizing an abrupt drop in points using the 1 point intervals.

Mayor Pro Tempore Sellers felt that it was important to have the discussion of the concentric circle and felt that it provided a balance. He felt that the RDCS subcommittee did a great job recommending the half point increments going out. However, he felt that at some point you would get diminishing returns. If you get a few points less for being further out, he felt that it defeats the purpose. He felt that it made sense that at a certain point, the City could stop making it half point increments and start assigning a full point.

Ralph Lyle addressed the building coverage concern, noting that there are 26 points that can be achieved in a 20 point category. He felt that there is a good chance that projects could still achieve the full 20 points. He noted that the RDCS subcommittee added points for using grey water under the landscaping 2e criteria.

Mayor Pro Tempore Sellers said that if you are not encouraging the use of grey water in the building itself, the project would not be encouraging the use of grey water.

Council Member Carr said that he appreciated that the use of grey water was added to section 18.78.320 but felt that there should be a criteria that would encourage plumbing for grey water.

Mr. Lyle said that there was a lot of discussion about the cost of plumbing for grey water. With respect to having a developer on board, it was his belief that projects would end up being built later if you do not have a developer on board. Bringing a developer on board at a later date may result in changing the design of the home and the lot layout, pushing the project back.

Council Member Tate recommended that a developer be penalized for pushing the project back rather than penalizing the land owner for not having a developer on board.

Mr. Lyle felt that the landowner may not be able to sell a project if a developer does not like the project. When a landowner sells a project, the project more than likely will be redesigned. He said that as an alternative, the City could state that if a property owner does not have a developer on board in a two year competition, the allotment would be for the second year or you achieve minimum allotments in the first year. This would give the property owner an extra year to sell the project and still have time to redesign the project, if necessary. The RDCS subcommittee felt that this alternative would be more onerous than the one proposed. With respect to distance, he said that the RDCS subcommittee discussed various alternatives. The RDCS subcommittee looked at changing the distance at various places. However, the RDSC subcommittee had a concern that wherever you start drawing a line, you will have individuals stating that there was gerrymandering taking place and they were hurt by where the line was drawn. He said that he has always been bothered by the fact that you may have two projects across the street from each other; one within the core and the other outside the boundary by a few feet, losing a whole point. He felt that the City has tightened the core area.

Council Member Chang inquired how one would define the term “developer”.

City Manager Tewes referred to page 235 of the agenda packet that defines a developer as a “qualified residential home builder.”

Mr. Lyle further clarified that a qualified residential home builder is someone who has built homes before of the same variety. He said that the RDCS subcommittee was trying to avoid the delay issue, and thus the recommendation for having a qualified homebuilder on board.

Council Member Carr said that if there is concern with gerrymandering the lines, why not eliminate it as there is a voter approved core. He said that he was trying to recall the discussion of the RDCS update committee, noting that it spent a lot of time on this issue. He said that the core was the compromise between eliminating the east/west split and strengthening the core.

Mr. Lyle indicated that the voter initiative states that everything outside the core is to be treated equally. He noted that there are a lot of projects located between the core and Highway 101 that used to receive the maximum points and now they will not. He said that projects located a way from the core have lost points and that changing the core would not impact these projects. Projects that were being impacted were those projects that were just beyond the core by $\frac{1}{2}$ - 1 point. The RDCS subcommittee suggests that the City use the core design in the first competition to see how it works.

Council Member Carr noted that in the Planning Commission minutes, Ms. Lindenthal expressed concern about affordable projects in that they would have difficulty scoring 150 points. A way to achieve 150 points was to pay in lieu fees, defeating the purpose of affordable housing.

Planning Manager Rowe stated that the RDCS subcommittee met again following the planning commission meeting and made further changes that improved the scoring for affordable projects.

Mr. Lyle clarified that the R-3 projects now have additional point opportunities that they did not have before in being able to achieve minimum passing scores. He felt that Ms. Lindenthal's concerns have been adequately addressed.

Dick Oliver indicated that in his 1995-96 Measure P applications, he proposed the use of grey water. He did not know of any city that has approved a grey water system because of health issues or being unable to find a supplier who could install the grey water system. Therefore, the subcommittee could not recommend the use of grey water in granting a point as it adds cost to the builder when there is no guarantee that it could be hooked up to a meaningful grey water system.

Mayor Kennedy recommended that the City add language that would encourage a grey water system as an alternative.

Mr. Oliver said that he does not want to throw money away on a system that is not feasible at this time. He said that an instant hot water system could fit the criteria.

Council Member Carr said that the grey water issue is important to him. He felt that the Mayor's suggestion of including a grey water system as an example was a good suggestion. Regarding the issue of having a qualified residential home builder on board at time of application, he did not know the answer to this. He expressed concern that the City would be placing the landowner at a disadvantage. He noted that Council Member Tate felt that the Council needs to address the issue of delays and refilling applications versus bringing a developer on board early in the process.

Planning Manager Rowe informed the Council that Measure C states that RDCS applications are to be filed no later than 21 months prior to allocations.

City Attorney Leichter said that if it is the Council's intent to have the first reading of the ordinance this evening, the Council needs to identify and make changes this evening. The changes can be made orally and incorporated them into the ordinance this evening.

Mayor Kennedy recommended that the Council take action this evening, identifying the modifications to be incorporated into the ordinance. He noted that the grey water item is an easy one to address. He stated that he would support giving the core recommendation a try.

Council Member Carr stated that he was also willing to give the core recommendation a try.

Mayor Pro Tempore Sellers said that he too would be willing to use the core criteria as presented for a year. However, he requested that a similar map be produced a year from now or after going through the first competition that shows what the allocation distribution.

Mayor Kennedy noted that the Council generally agrees with most of the recommended changes with the most difficult one being the qualified residential home builder. He recommended that this be handled as a separate amendment in the future.

Planning Manager Rowe said that the Council could strike reference to the qualified residential home builder from the proposed ordinance this evening.

Mr. Lyle noted that it was recommended that R-3 projects compete under a separate set aside so that R-3 compete against themselves as it relates to building coverage.

Planning Manager Rowe felt that with the changes made, the proposed text amendments would create enough opportunity to ensure that affordable projects would achieve above minimum scores. If it is found that a problem still exists, there is an opportunity, in between competitions, to make further changes.

Council Member Carr indicated that the only other area he has concern is regarding water conservation. He stated that he appreciated all the work that went into the text amendment to talk about drought tolerant landscaping. He referred to section 2.d, requires that at least 50% of all plant material and water conserving plants to be used. He inquired whether this was enough or whether an even greater amount should be encouraged based on the significant water issue being experienced. He suggested that ½ point be awarded when utilizing 50% water conserving plants and 1 point when utilizing greater than 50% water conserving plants.

Mayor Kennedy recommended that this criteria be changed to utilizing 75% drought tolerant landscaping.

Action: *On a motion by Council Member Tate and seconded by Council Member Chang, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance No. 1677, New Series, Amending Articles II and III of Chapter 18.78 of the Morgan Hill Municipal Code.*

Action: *On a motion by Council Member Tate and seconded by Council Member Chang, the City Council **Introduced** Ordinance No. 1766, New Series, by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING ARTICLES II AND III, THE STANDARDS AND CRITERIA AND PROCEDURES OF THE RESIDENTIAL DEVELOPMENT CONTROL SYSTEM AS SET FORTH IN CHAPTER 18.78 OF THE MORGAN HILL MUNICIPAL CODE, incorporating the following amendments: 1) 18.78.280.B.2b to include grey water (recycled water) system for irrigation; 2) 18.78.280.4a amended to award 2 points for use of multi-unit court yard interior to the project; 3) 18.78.280.5 deleted; and 4) Section***

18.78.320B.2d amended to increase the water conserving plant selections from 50% to 75% in the landscape, by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

22. CITY MANAGER'S PROPOSED 2004-2005 BUDGET AND CAPITAL IMPROVEMENT PROGRAM

Finance Director Dilles presented the staff report, noting that the staff report identifies additional savings based on the Council's direction to staff to return with \$100,000 in additional expenditure reductions in the general fund in order to be able to stay on the sustainable budget strategy adopted by the Council. He said that the specific recommended cuts are identified in the agenda packet.

Mayor Kennedy noted that initially, there were high energy utility costs associated with the operation of the community and cultural center. He inquired whether the high energy utility costs were under control. He said that it may be smart to bring on board a consultant/contractor who can investigate whether there were ways to cut down the operating costs for the center, an individual who will guarantee a return on energy savings, looking at the energy costs of a facility.

City Manager Tewes stated that staff still has a concern regarding the high energy utility costs and that staff has retained a series of consultants to work the City on this concern. He indicated that some improvements have been made. He said that there are items being recommended and that staff is evaluating these in the context of design and construction claim issues.

Mayor Pro Tempore Sellers confirmed that the Council received an extensive report and participated in a budget workshop. Therefore a lot of the Council's concerns have been addressed. He said that Public Works made a presentation where they outlined a creative and well thought out plan for reducing costs by turning some of the City's landscaping into different uses, and not having quite as dense landscaping. He expressed concern that as the City goes through these cuts, the City will be taking actions that cannot be reversed or replaced as easily. He inquired to what degree the park areas are proposed to be eliminated and slated for replacement at some point in the future. If there are no plans to replace park improvements, he felt that the Council/City needs to be clear about this and not let the public believe that this is a temporary situation when the City is making permanent changes.

City Manager Tewes stated that it is clear that the recommendation before the Council suggests that all future and existing parks will have less turf area than exists today; a consequence of having to bring the budget to a sustainable balance over the next couple of years.

Mayor Kennedy stated that the City has made significant cuts in the budget. For the most part, the cuts have been painless to residents. He said that lots of services have been cut and that the City is operating with a leaner operation, creating stress on city employees as they have to do more with less. He stated that the Council has been trying to reduce the budget without having to cut services. For the large part, the services that have been cut have not been visible to the public. He indicated that this year, the City will be cutting \$900,000 from the budget, noting that last year and the previous year, the City cut 5%

from the budget. He said that the City wants to provide the best service to the public, yet the City has to make serious cuts. At some point, it will become obvious to the public that services will be impacted.

City Manager Tewes indicated that in January 2004, the Council adopted a sustainable budget strategy. This strategy suggests that rather than making dramatic, radical and adverse cuts that would affect the community, that the City takes a series of measures/planned steps over the years to bring the budget into balance. This was done to avoid significant adverse impacts on the community. The Council indicated a desire to first look at reductions in “less critical services.” He said that the cuts that staff has been recommending are in the less critical services, noting that direct public safety services are still of high priority. He stated that the sustainable budget strategy requires that the City takes a series of budget reductions this year and next. It also requires that the City adds to the revenue base the following years. These actions are required to maintain the current levels of services. He indicated that the sustainable budget does not address the growth of the community and the demand for increased services. The gap between what the community expects and what the City will be able to deliver may continue to grow. He stated that he is proud that the City organization was able to step up to the plate and identify the cuts being recommended to the Council.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Council Member Tate said that in previous years, the City had the ability to add items to the budget and had the capability of providing enhanced services. He said that the City is at a point where it has to cut the budget by \$900,000 and that the Council will have a discussion about where it can go to raise revenues in the future so that the City can achieve a balanced budget. He stated that the Council cannot suggest incorporating items back into the budget unless you can suggest where the funds could be taken from. He complimented staff for meeting the Council’s objective of a balanced budget.

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) **Directed** Staff to Incorporate \$100,000 in Structural General Fund Expenditure Reductions to the Proposed 2004-2005 Budget, as Delineated by Staff.*

23. APPROVAL OF 2003 REPORT REGARDING PUBLIC HEALTH GOALS FOR WATER QUALITY

Director of Public Works Ashcraft presented the staff report. He indicated that the report addresses the risk of exceeding the public health goals and the cost to the agency for the removal of contaminants. He stated that the purpose of the report is to give the public an opportunity to ask questions before staff posts the report on the State Health Department’s website. In response to Council Member Carr’s question, he indicated that most communities are finding that lead and copper are being detected as a result of it going into the water within the homes and not from the City’s drinking water system. He said that the City is not finding lead or copper in new homes but in the older homes built in a certain era.

Mayor Kennedy said that it was found that brass contains lead. This typically occurred in homes where older solders included lead. He said that newer solders no longer use lead and that the amount of lead

found in brass fittings is being reduced as well. When you have water that is corrosive, it leaches the lead out of the solder from brass fittings. This is how it gets into the water, originating from the homes. He said that it is the City's challenge to deliver water in a manner that is not corrosive. He requested additional information on this particular point.

Mayor Kennedy opened the public hearing. No comments were offered.

Action: *Information Only.*

24. **AMENDMENT OF MUNICIPAL CODE REGARDING AMENDMENT OF UNIFORM ADMINISTRATIVE CODE PROVISIONS, INCLUDING FEE REVISION – Ordinance No. 1678, New Series**

City Attorney Leichter presented the staff report.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action: *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance No. 1678, New Series, Amending Chapter 15.04 (Administrative Code) of Title 15 (Buildings and Construction) of the Municipal Code of the City of Morgan Hill and Fees.*

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council **Introduced** Ordinance No. 1678, New Series, by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL REPEALING CHAPTER 15.04 (Administrative Code) OF TITLE 15 (BUILDINGS AND CONSTRUCTION) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL, AND ADDING SECTION 15.04.100 (Violations of Chapter - Penalties) TO TITLE 15 (BUILDINGS AND CONSTRUCTION) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL, THEREBY AMENDING PROVISIONS OF THE UNIFORM ADMINISTRATIVE CODE REGARDING BUILDING ADVISORY COMMITTEES (UAC SECTION 204), VIOLATIONS (UAC SECTION 205), CERTIFICATE OF OCCUPANCY-CERTIFICATE ISSUED (UAC SECTION 309.3), and FEES (UAC TABLE 3-A) by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.***

City Council and Redevelopment Agency Action

OTHER BUSINESS:

25. **HOUSING TYPE, DISTRIBUTION AND TERM FOR 2004-2005 MEASURE "C" COMPETITION (FY 2006-2007 BUILDING ALLOTMENT) AND SEPARATE DOWNTOWN AREA COMPETITION (FY 2007-2008 BUILDING ALLOTMENT)**

Planning Manager Rowe presented the staff report, indicating that the Planning Commission recommends the Council establish an affordable set aside that would represent 20% of the 250 allocations. Further, it is recommended that the Council reserve approximately 4% of the total allocations for micro projects. The balance of the 250 allocations (approximately 70% of the total) would be allocated in the open market competition, noting that a portion of this number has already been allocated in last year's competition. In addition to the affordable/micro set asides, it is being recommended that the Council establish an allocation for ongoing projects. He informed the Council that only three projects are eligible as ongoing projects. Regarding allocations for projects in the downtown area, he indicated that one change in Measure C requires that a separate allocation be provided for projects that are located in the downtown area. The Commission is recommending that 15 units be allocated in 2005-06 and that this number be increased to 40 units in 2006-07. It is also recommended that there be a two-year competition with the exception for the downtown area such that developers have an opportunity to apply again the following year. He said that should the City have no one interested in downtown allotments in the first year, the allotments could be allocated to other projects in the open market competition. If this occurs, there would be 55 allocations available in 2006-07.

Mayor Kennedy thought that the Planning Commission was going to discuss the idea of having a competition soon (within a year) that would allow for downtown projects.

Planning Manager Rowe clarified that there will be a competition to be held for downtown area projects with a filing deadline of October 1, 2004. If there are no applications for the 15 allocations in the downtown, these allocations would be allocated to other projects in the open market competition as there is a requirement under Measure C that the allocations for this fiscal year must be allocated no later than 16 months prior to the start of the fiscal year. Should the City wait until next year, the City would be violating this requirement. To ensure that the downtown set asides remain whole, it is recommended that the City redistribute the set asides in the following year to open market projects. This would result in the reduction of 15 allotments available in 2007-08. These allotments would be shifted to the downtown area set aside. He indicated that another requirement of Measure C is that the Council defines the geographic limits for the downtown area. He informed the Council that the Planning Commission recommends that the downtown area be the area that is south from Main Avenue, west of Butterfield, north of Dunne Avenue and east of Del Monte Avenue. He identified the difference between the downtown area and the central core. He stated that a new category created, as a result of Measure C, was small vertical mixed use. It is being recommended that 10 units be set aside in each of the two fiscal years (2006-07 and 2007-08). These allocations can be distributed through a competition process or on a first come first serve basis. Any portion of the unused allocations would be carried over into the next year as provided by Measure C.

Mayor Kennedy opened the floor to public comment.

Johanna Tacci indicated that she and her sister Carol Tacci were in attendance to address the family property located on Monterey Road. She stated that the family would like to see an R-3 open market set aside. She indicated that no market rate R-3 projects have been approved during the entire lifespan of

Measure P. She said that all previous R-3 set asides have been for low income housing. She felt that the City is missing a housing type in Morgan Hill that would benefit the community, particularly children.

Ralph Lyle said that depending on what action the Council takes with the downtown set asides, the Council could decide next year to hold a two year competition, staggering the types housing competition to be held as an option.

No further comments were offered.

Planning Manager Rowe said that should the Council decide to have a separate set aside for open market R-3 projects, he felt that it would be better to do so in the year that the City has a full set of allocations (2007-08). He said that the allocations could be divided further but that it would result in fewer allocations being made available for single family or ongoing projects in the competition year. He stated that the City has been able to achieve the 20% multi family requirement through affordable housing set asides. He noted that there is a potential for downtown projects to provide market rate multi family housing units. He said that the Council could set aside allotments in the open market competition for R-3 projects and that staff would have to redistribute the numbers (e.g., reducing allotments from “any of the above” from 2006-07 and 2007-08 depending on the percentage or total number of set asides that the Council wants to establish for R-3 market rate units).

Mayor Pro Tempore Sellers agreed that multi family units is an area that the City is not capturing, noting that the City has a lot of young professionals who would like to have a high quality project to live in. He felt that this is an area that the City should encourage. Regarding the map that defines the downtown, he recommended that the area be extended north to Central Avenue and south to Bisceglia as there are significant housing development/infill opportunities. He felt that these areas would provide benefits in terms of access to the downtown, services, walkability, and access to transit, keeping to the core area concept. He stated that he would encourage the Downtown Association, the Economic Development Subcommittee and other organizations to actively contact property owners. He indicated that the best projects may not be the first ones in line for allocations. He noted that there were a lot of non resident property owners in the downtown area who may be waiting for the right opportunity. He recommended that the City be more active in promoting housing opportunities. He encouraged an earlier filing deadline for the downtown competition, advising downtown individuals of the filing deadline. He would support setting aside 15 units in each of the years for open market multi family allotments.

Mr. Lyle stated his support of a two-year competition. He expressed concern with getting rental set aside projects completed. He also expressed concern that with the set asides, noting that more than half of the units would be allocated without a competition.

Council Member Chang, Mayor Pro Tempore Sellers and Mayor Kennedy recommended that 15 multi family allotments be set aside for 2007-08 and 20 allotments under “any of the above” set aside category.

Planning Manager recommended an October 1, 2004 application deadline for multi family set asides in order to keep them on the same sequence as the open market units with the exception of the downtown area which will occur this year and next year. He further recommended that the Council stipulate the core area as depicted on the “core” map as there are some industrial areas that would follow the same alignment.

Council Member Carr stated that when the City reviewed the RDCS update, it was designed on the downtown task force map. He inquired whether a change to the downtown update would be necessary as it was his belief that there needs to be uniformity between the two. If the City is talking about downtown and benefits to the downtown, he wanted to stay consistent.

Mayor Pro Tempore Sellers said that the Downtown Plan addresses a broader variety of issues, including retail and multi mixed use projects. He said that with a residential use, you have a different set of criteria and benefits that can accrue. He inquired whether the same benefits would be accrued if the area is extended a little north and south.

Council Member Chang felt that Mr. Lyle raised a good point by stating that having nothing but set asides would result in not having a competition. She stated that expanding the downtown would allow for competition in this area.

Council Member Carr recommended that should the boundary be extended, the boundary be uniform with that of the Downtown Plan when it returns to the Council. He recommended that a priority be given to a downtown project in 2006-07. However, should the downtown units not be used in 2006-07, he recommended that the 15 downtown allotments be awarded to an R-3 project in 2006-07 to get the multi unit project(s) started earlier. He said that this would result in 55 downtown units in 2007-08.

Planning Manager Rowe indicated that the 2006-07 downtown units could be awarded to a multi-unit project if a downtown project does not come forward.

Council Member Tate expressed concern that the City may be moving away from an RDCS competition with set asides.

Dick Oliver noted that the City received 20 applications in last year’s competition with 12-15 projects not receiving allocations. He said that the recommended set asides would essentially eliminate single family and R-2 projects. He said that an R-3 application has not been submitted for several years and that there has not been a demand for multi family allotments. He felt that the City would be holding a competition for single family and R-2 projects where maybe 2 out of 20 applications would receive allocations. The unsuccessfully project proponents would question the competition.

Council Member Chang noted that the R-3 zoning district allows approximately 20-25 units per acre. These are you typical townhouse/condominium type development at a cost of approximately \$300,000-\$400,000, affordable to the average young adult. She noted that the single family homes being constructed cost approximately \$800,000 to purchase. These homes are not affordable to the average

person. Thus, the reason she believes that R-3 projects are important, noting that there has only been single family homes built.

Council Member Carr stated that he is suggesting that should there not be a request for the 15 downtown set asides in 2006-07 that they be made available to a multi family project(s). However, he acknowledged that Mr. Lyle raises a good point. He said that based on staff's presentation, there is not an expectation that the City will have downtown projects competing in 2006-07. If there is an opportunity to use 15 units for an R-3 project in 2006-07, he felt that this should be done.

Mayor Pro Tempore Sellers noted that Morgan Hill has the highest percentage of single family homes being built in the entire county. Therefore, the City is not hurting in terms of percentage. He agreed that there is a higher percentage of set asides being recommended than the City has had in a long time. He said that there is a reason for this; the City wants to get a housing balance back in the community. He said that the downtown competition is short lived (2-3 year shift) and that the allotments would shift back in a few years, rectifying any issues.

Mayor Kennedy noted that it appears to be the consensus of the Council to leave the 15-unit multi family allocations for 2007-08.

Action: *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Adopted** the Resolution Approving the Total Building Allotment and Distribution and Authorizing Measure C Competitions to be Conducted During Fiscal Year 2005-2005 for the FY 2006-2007 and FY 2007-2008 Building Allotment and Authorizing a Separate Downtown Area Competition Next Year for a Portion of the FY 2007-2008 Building Allotment; amending Section 2.c to change Main to Central and Dunne to Bisceglia with staff to reference an exhibit that depicts the area. Exhibit B to be amended for 2007-08 to include 15 set asides for multi family in the open market rate competition, reducing "any of the above" to 20 units.*

26. REVENUE INCREASE REVIEW

City Treasurer Michael Roorda presented the staff report on behalf of the Finance and Audit Committee, indicating that public safety is a majority of the general fund. He said that this is a key item, one that the Council wanted the Committee to look at closely so that public safety is not impacted as it was in the early 1990s. He addressed the budget actions that have occurred over the past years, including being able to increase the general fund reserve. He indicated that there are significant issues that need to be resolved. He stated that over the past 2-3 years the Council worked into the City's budget projection and forecast additional increases in services. As the City saw the actual results of incoming revenues, belt tightening took place, including dipping into the City's reserves over the past couple of years which will be necessary in the upcoming years. He said that instead of having a two year budgeting process, the Council was thoughtful in having a more strategic review of a five year period where it directed staff to evaluate where the City will be in five years if it continued in its current trend. It was clear that the City would have to use its reserves over this period of time without some action being taken. He said that cost cuttings are taking place and will affect services. He stated that there will be additional cuts

over the five year strategic period that will be implemented to achieve a balanced budget. However, the other component of the balance budget is to find a way to increase revenues to the City. He said that additional revenue sources may come from various opportunities (e.g., increased fees, increased taxes, increased economic development activity).

Action: *On a motion by Council Member Carr and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) agreed to extend the 11 p.m. curfew.*

City Treasure Roorda presented a power point presentation that highlights the Finance & Audit Committee's recommendations to help direct the Council's direction, efforts and emphasis over the coming weeks, months and years for potential increase in revenues to the City's general fund. He addressed the following: 1) Educating the public of what the City is dealing with and the objective of having a balanced budget within a time period. 2) Answer questions as to why a revenue increase is needed. 3) Identify dollar amounts that would be needed to sustain a balanced budget. 4) Presented a matrix that defines possible revenue source opportunities. 5) Examine a single source revenue versus multi source revenue. 6) Evaluate increasing user fees versus going to voters for a broad based tax increase. 7) Identify selection criteria for fairness and equity of potential revenue sources. 8) Creation of a revenue matrix that identifies potential taxes, revenue sources or fees. 9) Discuss plans for incremental economic development and current inhibitors to development. 10) Means to provide community input (e.g., advisory measure; community polling, community workshop or community blue ribbon task force that would advise Council). 11) Try and avoid divisiveness not only in the community at large but on the Council, working toward a unanimous decision no matter what may come out of deliberations. 12) Communicate timing for a November Ballot Measure, with a final date for submittal of a ballot measure by July 21, 2004.

Finance Director Dilles informed the Council that a general tax measure has to be voted upon by the voters at a general election of Council members unless the City Council, by unanimous decision, finds that there is a fiscal emergency.

Council Member Carr said that there has been discussion about demonstrating to the public that the City has made cuts and that the Council is dealing with the budget situation by looking at cuts first. He said that the difficulty in doing this is that it is a strategic goal over a five year period. He stated that a Council stated goal is not to be forced to make dramatic service cuts. He felt that demonstrating this fact is difficult as the City is not shutting down a fire station, the library nor taking actions that would demonstrate dramatic cuts because it is a Council goal not to do so.

Council Member Chang noted that the City has cut \$900,000 from the budget this year, a point that needs to be told to citizens on top of two years of previous cuts.

Mayor Kennedy said that in his discussions with the City Manager, there is a mid July date to have a ballot measure completed. It is his understanding that it would take staff 2-3 weeks to have all the documents ready to proceed. He said that a Council decision would have to take place by the June 23, 2004 meeting if the Council wants to proceed with a ballot measure.

Council Member Carr thanked City Treasurer Roorda for his leadership in putting together a framework that facilitated the Finance and Audit Committee through these discussions.

Mayor Kennedy recommended that each Council member provide an overview on these issues with the idea of coming back on June 23 with specific recommendations/action items. He felt that it was important to bring revenue options to the voters. He noted that it is clear that the financial forecast shows that the City needs additional revenue in addition to economic development growth. He said that the 911 dispatch fee would raise approximately \$800,000 in revenue and should seriously be considered. He also felt that an increase in sales tax could result in \$1.1 million in additional revenue and should also be considered.

Mayor Pro Tempore Sellers concurred with the general sales tax as an option. He noted that in order to provide the current (meager) level of service, the City needs to look at a revenue source that would provide general income. As this is a general revenue stream that is needed, the City should go to the citizens and state that it is a general tax that the City is pursuing that would closely match the projected revenue needs in the future. He noted that the 911 fee has been popular in a couple of communities. He said that it is attractive and relatively painless to implement at the front end but that it would not be as evenly disbursed in some ways. He felt that the 911 would impact lower income individuals and that it may face a court challenge. He recommended that the City takes an action that is as straight forward as possible. Further that this presentation be presented to other organizations. He noted that time is of the essence. He offered to phone in and cast his vote on the issue on June 23 as it is imperative that the entire Council weigh in on this issue.

Council Member Tate said that his preliminary thoughts are that he does not like the fee approach to the 911 and if being considered, it should go the voters. He expressed concern that this is a plan that the Council is studying as a steady revenue source to cover current services. He indicated that he served on the Fire Master Plan update and that there is a vision of constructing a fourth fire station. He felt that the City needs to consider and factor in more than just the existing services in considering this issue such as safety services in the future. He would agree to look at public safety services and the options, looking at the First Master plan, and how to incorporate some of the information into the planning process.

Council Member Carr said that he has not gone through and picked the appropriate tax because there are a lot of questions that need answers. He said that he was concerned about timing, believing that the City had to place a measure on the November 2004 ballot. However, the City Manager has some thoughts about this that has lessened his urgency on this date. It is felt that a stable reliable funding source is more important than an immediate funding source. He recommended that the Council discuss this further. He felt that the City needs to identify what it will get from a tax measure: holding current services study or will the City be able to expand services. He stated that the Council needs to have a discussion about examining many versus one revenue source. He said that there are a number of revenue sources listed on the chart that all by themselves could take care of the City's revenue problem. He inquired whether this is the way to proceed or whether the City should be looking at multi revenue sources that would get to the heart of fairness, equity, and neutrality. He also felt that the Council needs to have the conversation about complete cost recovery. He stated that he was not in favor of complete cost recovery

for all services taking place in the City. He felt that there were other services that the City should be seeking a greater cost recovery and that the City should be demonstrating these. Another area that should be discussed is economic development, identifying the current inhibitors to development and to what extent the City can count on economic development for revenue. The Council needs to discuss whether it wants to be aggressive in economic development and limit all of the inhibitors in place today, no matter the impacts. He said that he is willing to pay a higher tax somewhere else so that he does not have to have all of the impacts associated with big box stores. He felt that the Council needs to be able to answer these questions for the public before identifying the possible revenue source.

Council Member Chang agreed that economic development would be a good topic to discuss. She said that the City could increase fees or increase the right type of economic development. She agreed with Council Member Tate that the Council needs to look at revenues that would allow the City to increase services. She stated that she was not yet ready to take a tax measure to the voters in November 2004.

Mayor Pro Tempore Sellers inquired whether the Council wants to move forward in November with a potential tax measure. If not, the Council could conduct a more detailed analysis as its next phase of discussion.

Mayor Kennedy recommended that this item be agendaized for June 23 and the first meeting in July 2004.

City Manager Tewes indicated that the long range budget strategy states that the City needs to take certain actions in certain fiscal years in order to come into a “soft landing,” a continued reduction in the City’s reserves to a point where they are down to a 25% level. From this point on, the revenues would need to equal expenditures. As the City is talking about structural issues, he felt that it was critical that the City has a steady and reliable revenue source rather than having one that is not as steady and may be challenged.

Action: *It was the Consensus of the City Council to **Direct** staff to schedule this item for its June 16, 2004 meeting date and the first meeting in July, if necessary.*

FUTURE COUNCIL-INITIATED AGENDA ITEMS

No items were identified.

ADJOURNMENT

There being no further business, Mayor/Chairman Kennedy adjourned the meeting at 11:35 p.m.

MINUTES RECORDED AND PREPARED BY:

IRMA TORREZ, CITY CLERK/AGENCY SECRETARY